IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of:	)Attorney Docket No.: F-725
Robert H. Kummer Jr. et al.	)Appeal No.: 2008-4091
Serial No.: 10/681,724	)Confirmation No.: 6704
Filed: October 8, 2003	)Date: November 5, 2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REHEARING PURUSANT TO 37 CFR § 41.52

Sir:

Appellants respectfully request a Rehearing of a Decision on Appeal, No. 2008-4091, decided September 26, 2008. Appellants believe that no additional fees are due. Should this belief be incorrect, the Commissioner is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. **16-1885**. The basis for this Request is set forth below. The Board is respectfully requested to consider this request and reconsider its decision.

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None

Argument

On page 7, lines 11-15 of the Board's opinion, that Board states that "the step of 'determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension' need not be performed during the processing of the mail piece or specifically for that mail piece." This point was first made in the opinion of the Board.

The response is that as recited in claim 11, the software executable by the central processing unit includes instructions for "receiving a first class of service from a user for processing said mail piece; determining a weight of said mail piece using said scale and at least one dimension of said mail piece using said dimensioning module." Thus, the actual weight and at least one dimension of a specific mail piece are determined when the mail piece is being processed by the mail processing system. The claim continues with "determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension." This step is therefore absolutely performed during the processing of the mail piece and specifically for that mail piece, since the determination as to whether the first class of service received from the user is appropriate for the mail piece is specifically tied to the determined weight and determined at least one dimension for that mail piece.

The entry of a custom template in Kulik is not the same as the present invention. In Kulik, a user inputs a custom rates template that will define the class and rating for each mail piece based on the weight of the mail piece. After input of the template, the custom rate processor 31 interacts with the rates manager 25, as outlined above, to develop a custom rates rate table 31 corresponding to the template. An example of a custom rates rate table is provided in Table 3 of Kulik, reproduced below.

TABLE 3

WEIGHT	CUSTOM CLASS	MEANING
weight1	rateA1	class A rate for weight1
weight2	rateA2	class A rate for weight2
weight3	rateB3	class B rate for weight3
weight4	rateB4	class B rate for weight4
weight5	rateC5	class C rate for weight5
weight6	rateC6	class C rate for weight6

Thus, in Kulik a user can define one or more custom rates templates and a corresponding number of custom rates rate tables. During operation of the mail processor, the operator can select a rate table to apply for processing of an input mail stream. For this purpose, the processor presents a list of available rate tables on the display. The displayed list includes all of the standard postal rate classes as well as the names of all of the currently available custom rates rate tables. The user simply selects a table by name from the displayed list, either a standard table or a custom rates rate table, and the mail processor processes all pieces of input mail in accord with the rate table corresponding to the selected table name. (Col. 10, lines 6-21).

Note that in Kulik, as illustrated in Table 1, reproduced below, each class supports each and every weight.

TABLE 1

WEIGHT	CLASSA	CLASSB	CLASSC	CLASSD
weight1	rateA1	rateB1	rateC1	rateD1
weight2	rateA2	rateB2	rateC2	rateD2
weight3	rateA3	rateB3	rateC3	rateD3
weight4	rateA4	rateB4	rateC4	rateD4
weight5	rateA5	rateB5	rateC5	rateD5
weight6	rateA6	rateB6	rateC6	rateD6

As specifically stated in Kulik, "Every weight X will have a corresponding rate XY for every class." (Col. 7, lines 45-46). Thus, each of the classes A, B, C, and D are suitable for all weights from weight1 through weight6.

The system in Kulik will not operate in the same manner as the present invention. For example, if the operator selects Class A and a custom rate table in Kulik, such as illustrated above in Table 3, then the class in which a mail piece will be processed is still based solely on the weight of the mail piece as provided for in the custom rate table, and not on the preferred class (e.g., Class A) as input by the operator. If, for example using Table 3 above, the weight of a mail piece is Weight3, it will be processed at Class B rate, even though the operator selected Class A, which as shown above with respect to Table 1 of Kulik, is an appropriate class for processing mail with Weight3.

If the operator in Kulik selects a standard rate table that includes the weights for only a single class, the system in Kulik will always use the class for the selected standard rate table even if the class from the standard rate table selected is unsuitable for the mail piece because of an oversize dimension. Thus, the system in Kulik will always use that rate table (and hence that class) regardless if the class is not appropriate for the mail piece based on a dimension of the mail piece.

The system in Kulik does not determine whether the first class of service received from the user is appropriate for the mail piece using a determined weight and a determined dimension as is recited in claim 11. Instead, if a custom rate table is selected in Kulik, it will automatically apply the class specified for the weight of the mail piece without any regard to a class selected by the user. If a standard rate table is selected in Kulik, it will always apply the class from the standard rate table without determining if that class is appropriate based on the weight and at least one dimension. The system in Kulik also will not determine a second class of service for the mail piece using the determined weight and the determined at least one dimension if the first class of service is not appropriate as is recited in claim 11. Instead, as noted above, if a custom rate table is selected in Kulik, it automatically applies the class specified for the weight of the mail piece without regard to a class selected by the user, so there is no determination of whether or not the class selected by the user is appropriate and if not, determining a second class for the mail piece. A custom rate table makes only a single determination. If a standard rate table is selected in Kulik, the system in Kulik will never

determine a second class; it can only utilize the single class provided in the standard rate table.

There is also no disclosure, teaching or suggestion in Ramsden of determining whether the first class of service received from the user is appropriate for the mail piece using a determined weight and a determined dimension, and determining a second class of service for the mail piece using the determined weight and the determined at least one dimension if the first class of service is not appropriate.

As described above, Kulik's mail processor as modified in view of the teachings of Ramsden would not include software having instructions to determine whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension.

For at least the above reasons, Appellants respectfully submit that the final rejection as to claim 11 is in error and should be reversed. Claims 12-20 are dependent upon claim 11, and therefore include all of the limitations of claim 11. For the same reasons the final rejection as to claim 11 is in error, Appellants respectfully submit that the rejection of claims 12-20 is similarly in error and should be reversed.

Respectfully submitted,

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